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HOUSE BILL 491

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR PUBLIC FINANCING OF
PUBLIC REGULATION COMMISSION CAMPAIGNS; ESTABLISHING THE
PUBLIC REGULATION COMMISSION CAMPAIGN FUND; PROVIDING POWERS
AND DUTIES; PROVIDING PENALTIES; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 9 of this act may be cited as the "Public Regulation
Commission Public Financing Act".

Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS. -- The
legislature finds that:

A. the costs associated with running for public
office have risen greatly, with disturbing effects on the

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1 political process. Some of those effects include:

2 (1) the exclusion of many qualified
3 candidates from the electoral process;

4 (2) impropriety or the appearance of
5 impropriety in the raising of campaign funds because of the
6 large amount of money required for successful competition in
7 the political arena; and

8 (3) the increase in public cynicism about the
9 political process and the lessening of public confidence in
10 elected public officials;

11 B. the United States supreme court has indicated
12 that any limitation on campaign expenditures must be entered
13 into voluntarily and the use of public financing of campaigns
14 is a constitutionally permissible way in which to encourage
15 candidates to adopt voluntary campaign spending limits;

16 C. using public funds to assist in the financing
17 of campaigns for certain offices, in conjunction with
18 voluntary campaign spending limits, may serve to alleviate
19 some of the disturbing effects of the high cost of political
20 campaigning; and

21 D. the adoption by the people of the
22 constitutional amendment creating an elected public regulation
23 commission provides an opportunity for the state to experiment
24 with public financing in a limited and cost-effective way to
25 see if it serves its intended purposes and might be expanded

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1 to other political offices in the future.

2 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
3 Public Regulation Commission Public Financing Act:

4 A. "candidate" means a person who seeks or
5 considers running for the commission, who either has filed a
6 declaration of candidacy or nominating petition or has
7 received contributions or made expenditures of two thousand
8 five hundred dollars (\$2,500) or more or has authorized
9 another person to receive contributions or make expenditures
10 of two thousand five hundred dollars (\$2,500) or more for the
11 purpose of seeking election to the commission;

12 B. "commission" means the public regulation
13 commission;

14 C. "fund" means the public regulation commission
15 campaign fund; and

16 D. "person" means an individual; firm,
17 partnership, corporation, business, joint venture or similar
18 business or commercial entity; or a political action
19 committee, campaign committee or other organization organized
20 to participate in electoral or party politics.

21 Section 4. [NEW MATERIAL] PUBLIC REGULATION COMMISSION
22 CAMPAIGN FUND. --

23 A. The "public regulation commission campaign
24 fund" is created in the state treasury. The fund consists of
25 appropriations, gifts, grants, donations and interest from

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1 investment of the fund. The fund shall be administered by the
2 state treasurer, and money in the fund is appropriated to the
3 state treasurer to make distributions to qualifying candidates
4 pursuant to the provisions of the Public Regulation Commission
5 Public Financing Act. Money in the fund shall be disbursed
6 only on warrant drawn by the secretary of finance and
7 administration pursuant to vouchers signed by the state
8 treasurer or his authorized representative.

9 B. The fund shall be funded at three hundred fifty
10 thousand dollars (\$350,000) per year segregated from proceeds
11 collected from:

12 (1) inspection and supervision fees pursuant
13 to Section 62-8-8 NMSA 1978; and

14 (2) utility and carrier inspection fees
15 pursuant to Section 63-7-20 NMSA 1978.

16 C. Money transferred to the fund shall not revert
17 to the general fund during an electoral cycle, but money in
18 the fund in excess of three hundred thousand dollars
19 (\$300,000) on December 31 immediately following a general
20 election shall revert to the general fund.

21 Section 5. [NEW MATERIAL] FUNDING FOR QUALIFYING
22 CANDIDATES. --

23 A. Upon qualifying for public finance in
24 accordance with the Public Regulation Commission Public
25 Financing Act, candidates for election to the commission shall

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1 be eligible to receive regular and periodic payments from the
2 fund to defray expenditures of the campaign for office
3 pursuant to the following schedule:

4 (1) for the primary election:
5 (a) twenty thousand dollars (\$20,000)
6 within fifteen days of qualifying;

7 (b) ten thousand dollars (\$10,000)
8 fifteen days after the first payment; and

9 (c) ten thousand dollars (\$10,000)
10 thirty days after the second payment; and

11 (2) for the general election:

12 (a) twenty thousand dollars (\$20,000)
13 by July 1;

14 (b) twenty thousand dollars (\$20,000)
15 by August 15; and

16 (c) twenty thousand dollars (\$20,000)
17 by October 1.

18 B. Candidates who qualify shall be eligible to
19 receive:

20 (1) forty thousand dollars (\$40,000) for the
21 primary election campaign; and

22 (2) sixty thousand dollars (\$60,000) for the
23 general election campaign.

24 C. Money received pursuant to the Public
25 Regulation Commission Public Financing Act is subject to the

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1 reporting requirements of the Campaign Reporting Act.

2 Section 6. [NEW MATERIAL] QUALIFYING PRIMARY ELECTION
3 CANDIDATES. --

4 A. Except as provided in Subsection B of this
5 section, a primary election candidate for the commission
6 qualifies for funding pursuant to the Public Regulation
7 Commission Public Financing Act by:

8 (1) qualifying for placement on the primary
9 election ballot as certified by the secretary of state;

10 (2) having raised at least seven thousand
11 five hundred dollars (\$7,500) but not more than ten thousand
12 dollars (\$10,000);

13 (3) not having accepted more than two hundred
14 fifty dollars (\$250) from a person other than himself; and

15 (4) agreeing in writing to the following
16 terms and conditions:

17 (a) to limit campaign expenditures to
18 qualifying expenditures as provided in the Public Regulation
19 Commission Public Financing Act;

20 (b) to limit the amount of primary
21 election campaign expenditures to no more than the amount
22 raised in Paragraph (2) of this subsection plus money received
23 from the fund;

24 (c) to limit private primary election
25 campaign fundraising to that amount received prior to

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1 qualifying to receive money from the fund; and

2 (d) to return to the state treasurer
3 any unexpended money from the fund within twenty days after
4 the candidate ceases to be a candidate, becomes unopposed or
5 after the election is over with respect to those candidates
6 who remain qualified throughout the election.

7 B. No candidate shall be qualified to receive
8 money from the fund unless the candidate and at least one
9 other candidate for the same seat have qualified to have their
10 names on the ballot in the same election.

11 C. Qualification shall cease and unexpended money
12 received from the fund shall be returned to the state
13 treasurer in the event a candidate either ceases to be a
14 candidate or becomes unopposed during the election.

15 Section 7. [NEW MATERIAL] QUALIFYING GENERAL ELECTION
16 CANDIDATES. --

17 A. Except as provided in Subsection B of this
18 section, a general election candidate for the commission
19 qualifies for funding pursuant to the Public Regulation
20 Commission Public Financing Act by:

21 (1) qualifying for placement on the general
22 election ballot after having received funds pursuant to that
23 act during the primary campaign or having met the
24 qualifications for funding during the primary campaign except
25 for the requirement that candidates be opposed by another

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1 candidate for the same position; and

2 (2) agreeing in writing to the following
3 terms and conditions:

4 (a) to limit campaign expenditures to
5 qualifying expenditures as provided in the Public Regulation
6 Commission Public Financing Act;

7 (b) to limit the amount of general
8 election campaign expenditures to the amount received from the
9 fund;

10 (c) to not solicit or accept any
11 general election campaign money except that provided from the
12 fund; and

13 (d) to return to the state treasurer
14 any unexpended money from the fund within twenty days after
15 the candidate ceases to be a candidate, becomes unopposed or
16 after the election is over with respect to those candidates
17 who remain qualified throughout the election.

18 B. No candidate shall be qualified to receive
19 money from the fund unless the candidate and at least one
20 other candidate for the same seat have qualified to have their
21 names on the ballot in the same election.

22 C. Qualification shall cease and unexpended money
23 received from the fund shall be returned to the state
24 treasurer in the event a candidate either ceases to be a
25 candidate or becomes unopposed during the election.

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1 Section 8. [NEW MATERIAL] QUALIFYING EXPENDITURES. --

2 A. Money received from the fund may only be
3 expended on the following expenses attributable to campaign
4 activities:

5 (1) services for communication media,
6 including production costs;

7 (2) printing, photography, graphic arts or
8 advertising services;

9 (3) campaign office supplies;

10 (4) postage and other commercial delivery
11 services;

12 (5) meals, lodging and travel expenses for
13 the candidate and staff; and

14 (6) staff salaries.

15 B. Expenditures of money received from the fund
16 are subject to the reporting requirements of the Campaign
17 Reporting Act.

18 Section 9. [NEW MATERIAL] CAMPAIGN CONTRIBUTION
19 LIMITS-- RESTRICTIONS AND REQUIREMENTS-- PROVIDING PENALTIES. --

20 A. Except as otherwise provided in this section, a
21 candidate shall not accept contributions in excess of two
22 hundred fifty dollars (\$250) from a person other than himself.

23 B. A candidate may make contributions of any
24 amount of his personal funds to his campaign committee.

25 However, if a candidate contributes more than two thousand

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1 five hundred dollars (\$2,500) of his personal money to his
2 campaign, his opponent, or opponents on a prorated basis if
3 more than one in that specific election, shall receive the
4 amount from the fund that the candidate would have received.
5 In addition, if a candidate contributes his personal money in
6 excess of two thousand five hundred dollars (\$2,500), the
7 restrictions in Subsection A of this section no longer apply
8 to his opponent.

9 C. To qualify for money from the fund, a candidate
10 shall file a declaration of voluntary compliance with the
11 provisions of the Public Regulation Commission Public
12 Financing Act with the secretary of state at the time the
13 candidate files his declaration of candidacy or nominating
14 petition. The declaration shall state whether the candidate
15 agrees to be bound by the provisions of that act to be
16 entitled to qualify for money from the fund. Once filed, the
17 declaration of voluntary compliance cannot be withdrawn,
18 rescinded or changed.

19 D. If a candidate files a declaration of voluntary
20 compliance, he shall not exceed the expenditure limits set
21 forth in the Public Regulation Commission Public Financing
22 Act. If a candidate in a primary election violates his
23 declaration of voluntary compliance, then his name shall not
24 be printed on the general election ballot unless he pays,
25 within forty-five days after the primary election, a fine of

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1 three times the amount by which he exceeded the limit. If a
2 candidate in a general election violates his declaration of
3 voluntary compliance, then he shall not receive his
4 certificate of election unless he pays a fine of five times
5 the amount by which he exceeded the limit. Money paid
6 pursuant to this subsection shall be deposited in the general
7 fund.

8 Section 10. Section 1-8-25 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 170, as amended) is amended to read:

10 "1-8-25. PRIMARY ELECTION LAW - DECLARATION OF
11 CANDIDACY--PROPER FILING OFFICER.--The proper filing officer
12 for filing declarations of candidacy is:

13 A. the secretary of state for the offices of:

14 (1) United States senator;

15 (2) United States representative;

16 (3) all state elective offices;

17 (4) public regulation commissioners elected
18 from districts;

19 [~~(4)~~] (5) legislative offices elected from
20 multicounty districts;

21 [~~(5)~~] (6) all elective judicial offices in
22 the judicial department, except magistrates; and

23 [~~(6)~~] (7) all offices representing a district
24 composed of more than one county; and

25 B. the county clerk for the offices of:

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- 1 (1) all elective county offices;
2 (2) magistrates; and
3 (3) legislative offices elected from a
4 district located wholly within one county or which is composed
5 of only one county. "

6 Section 11. Section 1-8-26 NMSA 1978 (being Laws 1975,
7 Chapter 295, Section 12, as amended) is amended to read:

8 "1-8-26. PRIMARY ELECTION LAW- TIME OF FILING-- DOCUMENTS
9 NECESSARY TO QUALIFY FOR BALLOT-- CHALLENGE. --

10 A. Declarations of candidacy by preprimary
11 convention designation for any statewide office, [~~or for the~~
12 ~~office of~~] United States representative or public regulation
13 commission and declarations of candidacy for retention of a
14 justice of the supreme court or judge of the court of appeals
15 shall be filed with the proper filing officer on the second
16 Tuesday in February of each even-numbered year between the
17 hours of 9:00 a. m. and 5:00 p. m.

18 B. Declarations of candidacy for any other office
19 and declarations of candidacy for retention for all affected
20 district judicial offices shall be filed with the proper
21 filing officer on the third Tuesday of March of each even-
22 numbered year between the hours of 9:00 a. m. and 5:00 p. m.

23 C. Certificates of designation shall be submitted
24 to the secretary of state on the first Tuesday following the
25 preprimary convention at which the candidate's designation

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1 took place between the hours of 9:00 a.m. and 5:00 p.m.

2 D. No candidate's name shall be placed on the
3 ballot until the candidate has been notified in writing by the
4 proper filing officer that the declaration of candidacy, the
5 petition and the certificate of registration of the candidate
6 on file are in proper order and that the candidate, based on
7 those documents, is qualified to have his name placed on the
8 ballot. The proper filing officer shall mail the notice no
9 later than 5:00 p.m. on the Tuesday following the filing date.

10 E. If a candidate is notified by the proper filing
11 officer that he is not qualified to have his name appear on
12 the ballot, the candidate may challenge that decision by
13 filing a petition with the district court within ten days of
14 the notification. The district court shall hear and render a
15 decision on the matter within ten days after the petition is
16 filed. "

17 Section 12. Section 1-8-33 NMSA 1978 (being Laws 1973,
18 Chapter 228, Section 7, as amended) is amended to read:

19 "1-8-33. PRIMARY ELECTION LAW - NOMINATING PETITION - -
20 NUMBER OF SIGNATURES REQUIRED. - -

21 A. As used in this section, "total vote" means the
22 sum of all votes cast for all of the party's candidates for
23 governor at the last preceding primary election at which the
24 party's candidate for governor was nominated.

25 B. Candidates who seek preprimary convention

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1 designation shall file nominating petitions at the time of
2 filing declarations of candidacy. Nominating petitions for
3 those candidates shall be signed by a number of voters equal
4 to at least two percent of the total vote of the candidate's
5 party in the state or congressional district, or the following
6 number of voters, whichever is greater: for statewide
7 offices, two hundred thirty voters; [~~and~~] for congressional
8 candidates, seventy-seven voters; and for public regulation
9 commission, fifty voters.

10 C. Nominating petitions for candidates for any
11 other office to be voted on at the primary election for which
12 nominating petitions are required shall be signed by a number
13 of voters equal to at least three percent of the total vote of
14 the candidate's party in the district or division, or the
15 following number of voters, whichever is greater: for
16 metropolitan court and magistrate courts, ten voters; for the
17 state board of education, twenty-five voters; for state
18 representative, ten voters; for state senator, seventeen
19 voters; and for district attorney and district judge, fifteen
20 voters.

21 D. A candidate who fails to receive the preprimary
22 convention designation that he sought may collect additional
23 signatures to total at least four percent of the total vote of
24 the candidate's party in the state or congressional district,
25 whichever applies to the office he seeks, and file a new

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1 declaration of candidacy and nominating petitions for the
2 office for which he failed to receive a preprimary
3 designation. The declaration of candidacy and nominating
4 petitions shall be filed with the secretary of state either
5 ten days following the date of the preprimary convention at
6 which he failed to receive the designation or on the date all
7 declarations of candidacy and nominating petitions are due
8 pursuant to the provisions of the Primary Election Law,
9 whichever is later. "

10 Section 13. Section 1-8-36.1 NMSA 1978 (being Laws 1981,
11 Chapter 156, Section 1, as amended) is amended to read:

12 "1-8-36.1. PRIMARY ELECTION LAW- WRITE-IN CANDIDATES. --

13 A. Write-in candidates are permitted in the
14 primary election only for the offices of United States
15 representative, public regulation commission, members of the
16 legislature, district judges, district attorneys, state board
17 of education, magistrates and any office voted upon by all
18 voters of the state.

19 B. A person may be a write-in candidate only for
20 nomination by the major political party with which he is
21 affiliated as shown by his certificate of registration, and
22 such person shall have the qualifications to be a candidate in
23 the primary election for the political party for which he is a
24 write-in candidate.

25 C. A person desiring to be a write-in candidate

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1 for one of the offices listed in Subsection A of this section
2 in the primary election shall file with the proper filing
3 officer a declaration of intent to be a write-in candidate.
4 Such declaration of intent shall be filed before 5:00 p.m. on
5 the second Tuesday in March.

6 D. A write-in vote shall be counted and canvassed
7 only if:

8 (1) the name written in is the name of a
9 declared write-in candidate and shows two initials and last
10 name; first name, middle initial or name and last name; first
11 and last name; or the full name as it appears on the
12 declaration of intent to be a write-in candidate and
13 misspellings of the above combinations that can be reasonably
14 determined by a majority of the members of the precinct board
15 to identify a declared write-in candidate; and

16 (2) the name is written in the proper slot on
17 the voting machine or on the proper line provided on an
18 absentee ballot or emergency paper ballot for write-in votes
19 for the office for which the candidate has filed a declaration
20 of intent.

21 E. At the time of filing the declaration of intent
22 to be a write-in candidate, the write-in candidate shall be
23 considered a candidate for all purposes and provisions
24 relating to candidates in the Election Code, including the
25 obligations to report under the Campaign Reporting Act, except

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1 that he shall not be entitled to have his name printed on the
2 ballot.

3 F. No unopposed write-in candidate shall have his
4 nomination certified unless he receives at least the number of
5 write-in votes in the primary election as he would need
6 signatures on a nominating petition pursuant to the
7 requirements set out in Section 1-8-33 NMSA 1978.

8 G. A write-in vote shall be cast by writing in the
9 name. As used in this section, "write-in" does not include
10 the imprinting of any name by rubber stamp or similar device
11 or the use of preprinted stickers or labels. "

12 Section 14. Section 1-8-39.1 NMSA 1978 (being Laws 1993,
13 Chapter 55, Section 10) is amended to read:

14 "1-8-39.1. DECLARATION OF PREPRIMARY DESIGNATION--
15 CERTIFICATION BY SECRETARY OF STATE. --

16 A. Not later than six days after the dates for
17 filing declarations of candidacy by preprimary convention
18 designation, the secretary of state shall certify to the
19 chairman of each state political party the names of that
20 party's candidates for office of United States representative,
21 public regulation commission or for other statewide office who
22 have filed their declarations of candidacy by convention
23 designation and have otherwise complied with the requirements
24 of the Primary Election Law.

25 B. No person shall be placed in nomination at the

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1 convention unless he has been certified by the secretary of
2 state. "

3 Section 15. Section 1-8-43 NMSA 1978 (being Laws 1969,
4 Chapter 240, Section 180, as amended) is amended to read:

5 "1-8-43. PRIMARY ELECTION LAW - ORDER OF CANDIDATES ON
6 BALLOT. --

7 A. Candidates designated and certified by state
8 convention for a statewide office, [~~or~~] the office of United
9 States representative or public regulation commission shall be
10 placed on the primary election ballot in the order of the vote
11 received at the state convention. The candidate receiving the
12 highest vote shall be placed first in order on the ballot,
13 followed by the candidate receiving the next highest vote, and
14 so on until all the candidates designated for that office have
15 been placed on the ballot, provided that the names of two or
16 more candidates receiving an equal number of votes for
17 designation by convention for the same office shall be placed
18 on the primary ballot in the order determined by lot. Names
19 of candidates for statewide office, [~~or~~] the office of United
20 States representative or public regulation commission who do
21 not receive preprimary convention designation but who are
22 qualified candidates by declaration of candidacy shall be
23 placed on the ballot as determined by lot following convention
24 designated candidates.

25 B. The names of candidates for any other office in

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1 the primary election who are candidates by declaration of
2 candidacy shall be arranged on the ballot as determined by
3 lot.

4 C. The determination by lot shall be made
5 immediately following the closing time for filing declarations
6 of candidacy and all candidates or their agents shall be
7 entitled to be present at such time.

8 D. The order of preference for position on the
9 ballot shall be first, the top name position on the left-hand
10 column for each office, and thereafter, consecutively down
11 each name position in that column to the last name position.
12 If the number of candidates filing for the office so requires,
13 the order of preference shall continue consecutively from the
14 top name position on the left-hand column to the top name
15 position on the right-hand column, thence to the second name
16 position on the left-hand column, then to the second name
17 position on the right-hand column and thereafter continuing in
18 the same manner until all the candidates are positioned on the
19 ballot. "

20 Section 16. TEMPORARY PROVISION--TRANSFER OF FUND.--When
21 the Public Regulation Commission Public Financing Act is
22 repealed, unexpended or unencumbered balances remaining in the
23 public regulation commission campaign fund shall be
24 transferred to the general fund.

25 Section 17. APPROPRIATION--LOAN.--Three hundred thousand

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1 dollars (\$300,000) is appropriated from the general fund to
2 the public regulation commission campaign fund to provide
3 initial funding for the public financing of candidates for the
4 public regulation commission. This appropriation shall be
5 considered a loan from the general fund, and the state
6 treasurer shall repay the general fund as soon as practicable
7 from money deposited in the public regulation commission
8 campaign fund.

9 Section 18. DELAYED REPEAL. --The Public Regulation
10 Commission Public Financing Act is repealed on January 1,
11 2005.

12 Section 19. APPLICABILITY. --This act applies to primary
13 and general elections in and after 1998.

14 Section 20. EMERGENCY. --It is necessary for the public
15 peace, health and safety that this act take effect
16 immediately.